No. 80-849

IN THE

Supreme Court of the United States

October Term, 1980

Jefferson Trucking Company,

Petitioner,

vs.

Chauffeurs, Teamsters, Warehousemen and Helpers Local Union No. 135,

Respondent.

ON A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether the losing party in a labor arbitration can refuse to comply with the Award, sit back idly until the statute of limitations runs on bringing a motion to vacate, and then assert all of its objections to the Award if a suit to enforce the Award is filed by the other party?

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BRIEF FOR RESPONDENTS IN OPPOSITION

I.
OPINIONS BELOW

The decision of the United States District Court for the Southern District of Indiana is reported at 473 F. Supp. 1255. The decision of the Seventh Circuit Court of Appeals, affirming the District Court, is reported at 628 F. 2d 1023.

II.
JURISDICTION

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on August 28, 1980. The Petition herein was filed on November 26, 1980. Jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

III.
STATUTES INVOLVED

Although Section 301(a) of the Labor Management Relations Act, 1947, 29 U.S.C. §185(a), is set forth in the Appendix to the Petition (which is not designated as such but appears to be on pages s-t of the Petition), the Petitioner has omitted reference to the statutes which are really relevant here, and which were considered by the courts below. These are Indiana Code 34-4-2-12, and Sections 9 and 12 of the United States Arbitration Act, 9 U.S.C. §§9, 12, which are set forth below.

Indiana Code 34-4-2-12 provides:

> Confirmation of an award. — Upon application of a party, but not before ninety [90] days after the mailing of a copy of the award to the parties, the court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in sections 13 and 14 [34-4-2-13, 34-4-2-14] of this act. Upon confirmation, the court shall enter a judgment consistent with the award and cause such entry to be docketed as if rendered in an action in said court. [Acts 1969, ch. 340, §12, p. 1429.]

Section 12 of the United States Arbitration Act provides:

> Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed

> or delivered. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court. For the purposes of the motion any judge who might make an order to stay the proceedings in an action brought in the same court may make an order, to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award.

Section 9 of the United States Arbitration Act provides, in material part:

> If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title.

IV.
STATEMENT OF THE CASE

This case was resolved by the courts below entirely on the basis of the legal issues raised by the parties. There was no trial or litigation of the underlying facts, including the alleged factual bases for a petitioner's affirmative defenses challenging the validity of the arbitration award involved here. The courts below were presented with the question whether, as a matter of law, defendant was barred in an action to confirm an arbitration award from attacking the validity of the award because it failed to raise objections to the award in an action to vacate brought within the

statutorily-prescribed time for bringing such an action. The District Court concluded that defendant was so barred, and the Court of Appeals affirmed.

The basic outline of the procedural history of this case as described in Petitioner's "Outline of the Case" is substantially correct, except that Petitioner has failed to inform the Court that its Motion for Leave to Move to Vacate the Award was filed on July 28, 1978, 251 days following the delivery of the arbitration award. Additionally, Respondent feels compelled to point to a bald-faced lie at the end of the "Outline". The third affirmative defense Petitioner alleges it raised (Petition, pages 3-4) was simply not. This is easily seen by comparison with the actual Answer to Complaint and Affirmative Defenses, which is reprinted in the Appendix hereto.

V.
ARGUMENT

A. THE COURT OF APPEALS DECIDED NO ISSUE IMPORTANT ENOUGH TO WARRANT REVIEW BY THIS COURT, AND ITS DECISION IS CLEARLY CORRECT.

The Argument portion of the Petition is a word-for-word reproduction of the Petitioner's Brief to the Court of Appeals, which explains why it contains no discussion of the considerations governing review on certiorari contained in Rule 19.

The important issues in this case were decided long ago. In *Textile Workers vs. Lincoln Mills*, 353 U.S. 448 (1956) and *Local 205, United Electrical, Radio and Machine Workers of America vs. General Electric Company*, 353 U.S. 547 (1956), the Court decided that the federal law regarding the enforcement of arbitration provisions in collective bargaining agreements was to be fashioned under Section 301(a) of the Labor Management Relations Act, 1947, not the United States Arbitration Act, 9 U.S.C. §1ff. All of the important cases decided by this Court since that time have been decided under Section 301(a), without reference to the provisions of the Federal Arbitration Act. See *United Steelworkers of America v. American Manufacturing Company*, 363 U.S. 564 (1960); *United Steelworkers of America v. Warrior and Gulf Navigation Company*, 363 U.S. 574 (1960); *United Steelworkers of America v. Enterprise Corporation*, 363 U.S. 593 (1960); *Drake Bakeries v. Bakery and Confectionery Workers, Local 50*, 370 U.S. 254 (1962); *John Wiley and Sons, Inc. v. Livingston*, 376 U.S. 543 (1964); *Boys Market v. Retail Clerks, Local 770*, 398 U.S. 235 (1970); *Gateway Coal Company v. Mineworkers*, 414 U.S. 368 (1974); *Buffalo Forge Company v. United Steelworkers of America*, 428 U.S. 397 (1976); *Nolde Brothers, Inc. v. Bakery and*

Confectionery Workers, Local 358, 430 U.S. 243 (1977). Plaintiff's argument that the United States Arbitration Act applies to labor arbitrations *ex proprio vigore* is an obvious anachronism.

The precise issue in this case was what statute of limitations should be referred to, to determine whether the Petitioner had forfeited, by delay, the right to attack the validity of the arbitral award in favor of Respondent. Again, the important part of the issue was decided long ago, in *United Automobile Workers vs. Hoosier Cardinal Corporation*, 383 U.S. 696 (1966). In *Hoosier Cardinal*, the Court established the rule that in actions under Section 301(a), the federal courts should apply the appropriate state statute of limitations, 383 U.S., at 704-705. The Court also instructed the lower courts to resolve any doubts about which state statute is appropriate in favor of the shorter period of limitations. 383 U.S., at 707. The decision of the Court of Appeals in this case is merely an application, and a correct one at that, of the *Hoosier Cardinal* rule.

Following the guidelines of *Hoosier Cardinal*, the Court of Appeals chose as the appropriate state statute of limitations I.C. 34-4-2-12, reprinted above. According to this provision, the loser in an arbitration has ninety (90) days within which to move to vacate, modify or correct the award. If such action is not taken within the ninety-day time limit, the award is summarily confirmed. Petitioner suggests that there is something outrageous about this procedure, but the same procedure has been widely adopted by the States, both for labor arbitration and commercial arbitration. Indiana has adopted the Uniform Arbitration Act, of which Indiana Code 34-4-2-12 is a part. Several other States have adopted versions of the Uniform Arbitration Act which, like Indiana's, make it absolutely clear that summary confirmation should be granted unless the award is vacated within the specified time. *Arkansas Statutes*, §34-521; *Annotated Code of Maryland, Courts and Judicial Proceedings*, §3-227; *Nevada Revised Statutes*,

§38.135; *New Mexico Statutes*, §44-7-11; *General Statutes of North Carolina*, §1-567.12; *Wyoming Statutes Annotated*, §1-36-113. See also *Michigan General Court Rule* 769.8. The precise issue involved here has been resolved against the Petitioner's position in litigation in several Uniform Arbitration Act states. *Cutler Associates v. Merrill Trust Company*, ____Me.____, 395 A. 2d 453, 456, n. 4 (1978); *Component Systems, Inc. v. Murray Enterprises of Minnesota, Inc.*, 300 Minn. 21, 217 N.W. 2d 514 (1974); *Greene v. Mari & Sons Flooring Company, Inc.*, 362 Mass. 560, 289 N.E. 2d 860 (1972); *Bloom v. Landy*, 72 Ill. App. 3d 383, 389 N.E. 2d 1286, 1295 (1979). No State which has adopted the Uniform Arbitration Act has ruled to the contrary. The same result has been reached in many other States with similar arbitration statutes. See *Emporium Area Joint School Authority v. Anundson Construction and Building Supply Company*, 402 Pa. 81, 166 A. 269 (1961); *Heidelberger v. Cooper*, 300 N.Y. 502, 89 N.E. 2d 21 (1949); *Traveler's Insurance Company v. Allen*, 356 So. 2d 1287 (Fla. Ct. App. 1978); *Klubnikin v. California Fair Plan Association*, 84 Cal. App. 3d 393, 148 Cal. Rptr. 563 (1978); *McGuire v. Bricks*, 343 N.Y.S. 2d 166 (1973); *Textile Workers Union v. Uncas Printing & Finishing Company, Inc.*, 20 Conn. Supp. 91, 125 A. 2d 236 (1956); *In Re General Dry Cleaners*, 75 NYS 2d 615 (1947).

Far from being outrageous, the procedure approved by the District Court and the Court of Appeals here has only salutary effects. It encourages the prompt resolution of labor disputes. See *Hoosier Cardinal, supra.* It contributes to the finality of arbitration awards. *Steelworkers v. Enterprise Wheel & Car Corp., supra.* It also conserves judicial resources while preserving the right to limited review of arbitral awards—for diligent litigants.

B. THERE IS NO CONFLICT AMONG THE CIRCUITS ON THE ISSUE THE PETITIONER SEEKS THIS COURT TO REVIEW.

Although the petition, which is identical to the Petitioner's brief to the Court of Appeals, does not address this question, it is clear that there is no conflict among the Circuits on the issue involved here. The issue is, of course, whether it was proper for the District Court to apply a state statute of limitations providing for summary enforcement of an arbitration award if the losing party fails to seek to vacate, modify or correct the award within the short period of time also provided in the statute. The Seventh Circuit is the first Court of Appeals to decide this issue, although several district courts have held that failure, by a party to the arbitration, to move to vacate, correct or modify an award within the time prescribed by the state statute bars such an action. See *United Automobile Workers v. LaCrosse Cooler Company*, 406 F. Supp. 1213 (W.D. Wis. 1976); *United Mine Workers v. Jones & Laughlin Steel Corporation*, 378 F. Supp. 406, 1211-1212 (W.D. Pa. 1974); *Teamsters Local 249 v. Motor Freight Express, Inc.*, 356 F. Supp. 724, 726 (W.D. Pa. 1973).

In this Court, the Petitioner relies on two district court decisions misreading dictum in *The Hartbridge*, 57 F. 2d 672 (2nd Cir.) *cert. denied*, 288 U.S. 601 (1932). *Riko Enterprises, Inc. v. Seattle Supersonics Corp.*, 357 F. Supp. 521 (S.D.N.Y. 1973); *Paul Allison, Inc. v. Minikin Storage of Omaha*, 452 F. Supp. 573 (D. Neb. 1979). Both the district court and the Court of Appeals found that the courts in these two cases erroneously misread *The Hartbridge*, which they clearly had. See 628 F. 2d 1023, at 1026; 473 F. Supp. 1255, at 1259. Moreover, the courts in these cases were applying the United States Arbitration Act, which we have shown above is inapplicable *ex proprio vigore* under LMRA §301(a).

Finally, the issue in this case is different from that presented in *United Parcel Service, Inc. v. Mitchell*, now

pending in this Court on certiorari to the Second Circuit Court of Appeals (No. 80-169). In the *United Parcel Service, Inc.* case, the question is whether a non-party to an arbitration, an employee whose grievance was decided in the arbitration, is subject in his subsequent suit against his employer for breach of contract and his union for breach of its duty of fair representation to the short statute of limitations imposed by state law on a party to the arbitration who seeks to attack the validity of the award. Here, the Petitioner was a party to the arbitration, and unlike an employee has no special statutory rights which must be taken into consideration as against a strict application of the appropriate state statute of limitations.

VI.
CONCLUSION

The decisions of the courts below are completely consistent with the established legal principles involved in this case, and for the reasons stated above, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX OF RESPONDENT.

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UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CHAUFFEURS, TEAMSTERS, WAREHOUSEMEN AND HELPERS LOCAL UNION NO. 135,

Plaintiff, No. IP 78-216-C

v

JEFFERSON TRUCKING COMPANY,

Defendant.

ANSWER TO COMPLAINT AND AFFIRMATIVE DEFENSES

NOW COMES DEFENDANT, JEFFERSON TRUCKING COMPANY, by and through his attorney, WILLIAM T. WHITE, JR., and for his Answer to Plaintiff's Complaint answers as follows:

1. As to Paragraph One, Defendant admits the allegations contained therein.

2. As to paragraph Two, Defendant admits the allegations contained therein.

3. As to Paragraph Three, Defendant admits the allegations contained therein.

4. As to Paragraph Four, Defendant admits the allegations contained therein.

5. As to Paragraph Five, Defendant neither admits nor denies the allegations contained therein.

6. As to Paragraph Six, Defendant admits the allegations contained therein.

7. As to Paragraph Seven, Defendant neither admits nor denies the allegations contained therein.

8. As to Paragraph Eight, Defendant neither admits nor denies the allegations contained therein.

9. As to Paragraph Nine, Defendant denies the allegations contained therein.

10. As to Paragraph Ten, Defendant denies the allegations contained therein.

WHEREFORE, Defendant respectfully submits and requests that Plaintiffs' action be dismissed with prejudice, with actual costs and attorneys fees awarded to Defendant for expenses involved in the defense of this action. Further, that Defendant have and received such other and further relief as it may be entitled to in this action.

/s/ William T. White, Jr.
William T. White, Jr.
Attorney for Defendant

/s/ Barry L. Moon
Barry L. Moon, Attorney of
Counsel

AFFIRMATIVE DEFENSES

NOW COMES DEFENDANT, JEFFERSON TRUCKING COMPANY, by and through its attorney, WILLIAM T. WHITE, JR., and for its Affirmative Defenses all, each, or in the alternative, or in any combination states as follows:

1. That the resolution of the dispute in question is outside the jurisdiction and scope of the contractual relationship of the parties and therefore the said finding of the Joint Committee is void.

2. That the said dispute resolution is not reviewable in this Court at this time because there has been no final determination under the agreements.

3. The Plaintiff is not entitled to injunctive relief

because of its "unclean hands" in its activities and attempts to create and resolve the dispute in question.

4. The Plaintiff is not entitled to relief from this Court because of the Joint Committee's violation of its own rules, procedures and precedents.

5. The Plaintiff is not entitled to relief from this Court because of the arbitrary and discriminatory nature of the decision in light of the past practices of the Joint Committee in generating decisions in its interpretation of the essence of the relationship.

6. The relief Plaintiff seeks is not available at law.

7. The relief Plaintiff seeks is in violation of review and enforcement law and procedures because of latches.

8. Defendant has been denied critical and determinative information by the Plaintiff in Defendant's efforts to assess its position and status with regard to predicate medical qualification of Paul Nettleton for determination of qualifications to drive in accordance with Interstate Commerce Commission Rules and Regulations.

FOR these and any other lawful reason that Defendant reserves to notice up, when they may become relevant, Defendant affirmatively requests that this action be dismissed in accordance with its answer to Plaintiffs' Complaint.

/s/ William T. White, Jr.
William T. White, Jr.
Attorney for Defendant
708 Union Federal Bldg.
Indianapolis, Indiana 46204

/s/ Barry L. Moon
Barry L. Moon, Attorney
of Counsel
1015 Church Street
Flint, Michigan 48052

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the above and foregoing has been mailed this 5th day of May, 1978, to: Richard G. McCracken, Fillenwarth & Fillenwarth, 6919 East 10 Street, Suite E6A, Indianapolis, Indiana 46219.

/s/ William T. White, Jr.
William T. White, Jr.

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